

SRC APPROVED

Date August 8, 2013
SLM

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

July 11, 2013

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative
Doug Misner, History Representative
Patricia Smith-Mansfield, Governor's Designee
Ernest Rowley, Elected Official Representative
Holly Richardson, Citizen Representative

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Glead, Attorney General's Office

Attending via telephone: Phillip Leishman, Petitioner

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Matt Anderson, Utah Department of Corrections
Jason Knight, Utah State Archives
Donald Meyers, *Salt Lake Tribune*
Lorianne Ouderkirk, Utah State Archives
Greg Peay, Utah Department of Corrections
Gina Proctor, Utah Department of Corrections
Rebekkah Shaw, Utah State Archives

State Records Committee Chair, Lex Hemphill, opened the meeting and welcomed the participants at 9:40 a.m.

Hearing – Phillip Leishman vs. Utah Department of Corrections

Phillip Leishman was contacted by telephone at 9:40 a.m. Matt Anderson, attorney for UDOC, took his place at the respondents table. Mr. Leishman was connected by telephone. Mr. Hemphill explained the procedures for the hearing.

Opening statement – petitioner

Mr. Leishman said he had requested a copy of a clearance for another inmate's religious practices. The request was denied as a private record. He had asked that the inmate's name be redacted. UDOC's response was that release of the information would be a clearly unwarranted invasion of personal privacy without the approval of the inmate. In the original request, he said that the other inmate had provided him with the information that the records existed. He was not told that he needed written approval from the other inmate to receive the record. He said he was involved in litigation and needed the document to prove that the Department of Corrections was allowing privileges to certain religions which they were denying to others.

Opening statement – respondent

Mr. Anderson said the clearances at issue in the request had been given to an inmate named Phil Winter for temporary religious accommodations. The purpose of the clearances was to give Corrections staff information about the approved accommodations in order to allow them to change their routines and make arrangements for the accommodations to be met. The clearances show religious practices and beliefs. For that reason, the records were classified as private pursuant to Utah Code 63G-2-302(2)(d). The information could only be given with the permission of the individual who was the subject of the record. He asked that the committee uphold the department's classification of the record.

Testimony – petitioner

Mr. Leishman said the privacy interests of the other prisoner had been the reason for the denial but the other prisoner had explained to Mr. Leishman what he was doing and how he got it done. Since the information had already been provided, it seemed logical that the other prisoner was okay with the release. Mr. Leishman said that he had experienced a history of denials, rejections, and delays in his requests. He thought the denial was a tactic to deny him access to information which would help him prove his case in court. Corrections gave affidavits to the court stating that they no longer allowed special clearances for staff-supervised religious accommodations. Mr. Leishman knew that was false and wanted to prove such clearances existed. He said he had not been aware of the possibility of appeal beyond the Department of Corrections. He wanted to prove he had grounds to continue with his case in court. The document in question would help him accomplish that.

Testimony – respondent

Mr. Anderson said the two clearances and the religious information they contained were the only issues in the present hearing. He had the documents with him if the committee wanted to review them. The Government Records Access and Management Act (GRAMA) did not allow release of a private record based on assurances of the requester that the other person did not mind. Tracking such requests and getting clearance from the subject of the record would place an undue burden on the department since 70 to 80 requests from inmates were received each week. The traditional method of obtaining the record would be to obtain a signed notarized release from the party in question. Mr. Anderson said that Mr. Leishman is in litigation on religious issues and is using GRAMA to obtain documents for use in the litigation. A more effective method of obtaining the information would be through the discovery process. The judge in the case could review the documents in camera or release them to the parties subject to a protective order. Mr. Leishman has access to GRAMA and has been told about the full appeal process. The pattern of older requests being denied has not been challenged by Mr. Leishman in the past and should not be part of the current hearing. Mr. Anderson read from the clearance forms he had brought. The forms would reveal the name of the religious figure the individual is associated with, his religious identification, the religious activity he wants to participate in, and the dates and times of those activities.

Closing – petitioner

Mr. Leishman said he was not made aware that he needed a signed, notarized release from Mr. Winter to get the record. If he had known that, he would have asked for it. As a pro se attorney, he did not know how to request and receive records. Mr. Leishman said he had submitted a court

order to get the record. The request had been put on hold by Judge Clark Waddoups. To prove his case that exceptions were being made for other individuals, but not for him, Mr. Leishman wanted a copy of the clearance. In another request, he asked for information on his religion from the Department of Corrections. He was told the research would cost fifty dollars. When he paid the money, the department was no longer willing to provide any information. In the court case, the Department of Corrections claimed that religious clearances were no longer offered because of negative ideology associated with Asatru.

Closing – respondent

Mr. Anderson said Mr. Leishman was provided with a copy of Utah Code 63G-2-202, which explains that a private record can be released to an individual who submits a signed notarized release from the subject of the record dated no more than 90 days before the request was made. The department is concerned that if the information in the record were found to be public, they could expect many more requests for religious information about inmates. In the prison context, religious affiliation could be a liability. Hate groups based on religious identification exist within the prison. A precedent could be set by releasing an inmate's private religious information. It could have a chilling effect on inmates exercising their constitutional right to practice their religious beliefs. The court would be the best setting to consider whether the information is relevant to Mr. Leishman's case. He can make the argument to the court and a judge could consider the information without making the record public. Mr. Rowley asked Mr. Leishman if his records request would be satisfied by the name and signature of the person who had signed the approval form for religious accommodations. Mr. Leishman said it would; that he only wanted to demonstrate that an exception was made for a certain religion but not for his. Mr. Rowley asked Mr. Anderson if a form was available to request religious accommodations that would show the process and the person whose approval was required. Mr. Anderson speculated that if such a record did not contain individual inmate information, it could be subject to release.

Deliberation

Mr. Rowley made a motion that the record requested was properly classified as Private pursuant to Utah Code 63G-2-302(2)(d). Ms. Smith-Mansfield seconded the motion. Ms. Smith-Mansfield said there were steps the petitioner could take to get the records. Discovery was one method, and another was to get a waiver from the individual. A vote was taken. The vote was unanimous in favor of the motion. Mr. Hemphill thanked the parties for their attendance.

Approval of minutes

Mr. Hemphill said the minutes of June 13, 2013, should reflect that the case was dismissed because Mr. Desai had a new understanding of the requested records. He realized that Garfield County did not have a personal property auditor, and that the numbers he received had been given to him by Garfield County but were provided by the State Tax Commission. With this clarification, and clarification of the approved retention schedules changes, Mr. Rowley made a motion to approve the minutes with corrections. Ms. Richardson seconded the motion. A vote was taken. The vote was unanimous in favor of the motion.

Retention schedules

Jason Knight presented two retention schedules for approval. He said the two were new retention schedules. Both were from the Department of Human Services Office of Fiscal Operations. Both of the series have been reviewed and approved by the State Auditor's Office.

1. **28292, Contractor financial reports:** retain 5 years and destroy. Records are kept on both non-profit and for-profit contractors.
2. **28293, Rate setting records:** retain 30 years and destroy. The paper is retained in office for 20 years and then transferred to the State Records Center. The records are retained in the State Records Center for 10 years and then destroyed.

Patricia Smith-Mansfield made a motion to approve the retention schedules as presented. Ms. Richardson seconded the motion. A vote was taken. The vote was unanimous in the affirmative.

New committee member update

Ms. Smith-Mansfield said there was no information on a new citizen member for the committee.

Appeals received

Ms. Mumford said four hearings were scheduled for August. A list of the appeals would be sent to committee members. See the attached document for the list of July appeals.

Cases in District Court

Mr. Tonks reported on the cases in District Court. He said that two decisions of the committee had been overturned. In the years he had been counsel to the committee; it was unusual for any decision of the committee to be overturned. The two cases were Utah Department of Human Services vs. Wilson; and the Lawrence vs. Department of Public Safety case. See the attached document for a listing of the cases in District Court.

Other Business

Doug Misner said he would not be available for the August 8, 2013 SRC meeting. The other members present indicated they would be available. Ms. Mumford said she would poll the missing members, David Fleming and Holly Richardson, to see if there would be a quorum for the August meeting. Holly Richardson had excused herself from the meeting at this point.

Adjournment

The meeting was adjourned by acclamation at 11:08 a.m.

STATE RECORDS COMMITTEE
July 11, 2013

State Archives Building, Courtyard Meeting Room
346 S. Rio Grande (450 West)
Salt Lake City

AGENDA
Call to Order 9:30 a.m.

Hearing

Phillip Leishman vs. Utah Department of Corrections. Mr. Leishman is appealing the denial of a copy of a special security clearance to conduct religious services.

BUSINESS

Approval of June 13, 2013, SRC Minutes, action item

Approval of retention schedules, action item

Citizen member position for Committee, update

SRC appeals received

Cases in District Court

Other Business

ADJOURNMENT

Next meeting scheduled for August 8, 2013

**SRC Appeals Received
July 2013**

1. **13-20 Roger Stephenson vs. Alpine School District.** Mr. Stephensen, through the counsel of Johnstun Law, is appealing the denial of records of improper relationships between a former teacher at ASD and students or minors. Hearing scheduled for August.
2. **13-21 Tracy Taylor, Wasatch Taxpayers vs. Wasatch School District.** Ms. Taylor appealed the partial denial of the school district's full budget. Resolved.
3. **13-22 Eddie Underwood vs. Ogden Police Department.** Ogden City Records Review Board established pursuant to Utah Code 63G-2-701. SRC has no jurisdiction.
4. **13-23 Miguel Contreras Perez vs. Human Services DCFS.** Mr. Perez is represented by Ms. Kim Karn, an attorney with the Public Defender in Pueblo, Colorado. Mr. Keith Massey, an investigator at the same agency, is assisting in the defense and has appealed the denial of records relating to Mr. Perez in order to save him from the death penalty. Hearing scheduled for August.
5. **13-24 Wendy Romero vs. Human Services Administrative Hearings.** Incomplete. Sent instructions about how to complete.
6. **13-25 Colleen Schulte vs. Summit County.** Ms. Schulte is appealing a partial denial of records from the Summit County Attorney's Office involving the County Attorney's office and a specific person. Hearing scheduled for August.
7. **13-15 Reginald Williams vs. Utah Department of Corrections.** Mr. Williams is appealing the denial of an incident report and training records for UDC employees. Hearing scheduled for August.
8. **12-53 Reginald Williams vs. Administrative Services State Travel Office.** Mr. Williams is appealing a non-response denial of travel reimbursement request forms submitted by UDC employees to participate in training in 2011. Since this was not scheduled in a timely manner, Mr. Williams has been given correct addresses for the agencies and asked to renew his request in order to have timely records.
9. **13-12 and 13-16 Gregory Williams vs. Utah Department of Corrections.** Mr. Williams is appealing the denial of a copy of a notice of suspension from prison programs and all public shared areas. To supplement the appeal, he requested the assessment of an investigator into the incident. Incomplete. Original request or description of records sought lacking.

July 2013 Records Committee Case Updates

District Court Cases

Utah Transit Authority v. Janelle Stecklein, 3rd District, Salt Lake County, Judge Kelly, Case No. 120908696, filed December 21, 2012.

Current Disposition: Case in discovery stage with exchange of interrogatories and requests for admissions.

Granite School Dist. v. Salt Lake Tribune, 3rd District, Salt Lake County, Judge Kelly, Case No. 120907897, filed November 26, 2012.

Current Disposition: Hearing held on April 10, 2013. Judge Kelly granted Salt Lake Tribune's motion to dismiss based upon Granite School District's untimely filed appeal with District Court. Complaint was filed on the 35th day after the date of the Commission's order, and the court found that it did not have jurisdiction to hear the appeal based upon the language of Utah Code § 63G-2-404. Decision by Court on June 10, 2013 denying request for payment of attorney fees filed by the Salt Lake Tribune against the Granite School District. No appeal has been filed with the Court of Appeals.

Lawrence v. Dept. of Public Safety, 3rd District, Salt Lake County, Case No. 120907748, Judge Dever, filed November 19, 2012.

Current Disposition: Committee originally held that UHP records of Lawrence's complaint against a UHP trooper were not public because the charges were not sustained. June 5, 2013, Judge Dever reversed the Committee's decision and ruled in favor of Petitioner Jeffrey Lawrence, finding that the investigative records that are the subject of the request should be disclosed, the records are not records concerning performance evaluations or personal status information, and there is no merit that there is an unwarranted invasion of privacy. Court directed counsel for Lawrence to draft an order reflecting court's ruling.

Utah Dept. of Workforce Services v. Guberev, 3rd District, Salt Lake County, Case No. 120907203, Judge Faust, filed October 23, 2012.

Current Disposition: Petition for review filed by DWS. Answer filed on behalf of the State Records Committee on November 19, 2012.

Utah Dept. of Human Services v. Wilson, 3rd District, Salt Lake County, Case No. 120903186, Judge Kelly, filed May 10, 2012.

Current Disposition: June 14, 2013, Court granted DHS' Motion for Summary Judgment reversing decision by the Committee. Court found that orders from DHS are considered private under GRAMA based upon Office of Administrative Hearing statutes that require information to be kept private. "Utah law demonstrates the Legislature's intent to protect the proceedings and records in child abuse and neglect proceedings" pursuant to Utah Code § 62A-4a-412(1). Counsel for DHS has been directed to prepare an order reflecting the Court's decision.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

Current Disposition: Hearing held on June 8, 2013. Court found that parties can go forward with discovery to be completed within 60 days.

Appellate Court Cases

Attorney General Office. v. Schroeder, Court of Appeals Case No. 20121057.

Current Disposition: Trial held on October 19, 2012. Appeal filed by Schroeder requesting matter to be heard by the Utah Supreme Court. AG counsel has been assigned to represent the AG's office, Paul Tonks assigned to represent the Committee.

Salt Lake City Corp. v. Mark Haik, Court of Appeals Case No. 20130383.

Current Disposition: Summary Judgment granted in favor of Salt Lake City Corp. Court found that it had jurisdiction to hear appeal filed by Salt Lake City Corp. from a decision by its appeals board, holding that a governmental entity with appeal procedures set up pursuant to Utah Code § 63G-2-701 still get a right to an appeal to district court similar to an appeal from the State Records Committee. Court granted Motion to Dismiss the Committee since it was not a party to the proceedings below. An appeal has been filed with the Utah Court of Appeals by Mr. Haik.

Retention and Classification Report

Approval Form

Agency: Department of Human Services. Office of Fiscal Operations

Series 28292 Contractor financial reports

Number &

Title:

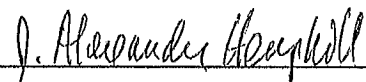
Destroying records in accordance with this agency Retention Schedule is in compliance with the Archives and Records Service and Government Records Access and Management Act (UCA 63-2-101 et seq.).

The Agency classifies its records under provisions of the Government Records Access and Management Act (UCA 63-2-101 et seq.). Classifications have not been approved by the State Records Committee.

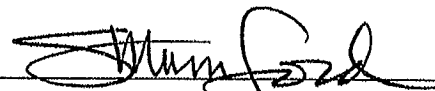
This agency retention schedule was approved by the State Records Committee in:

July/2013

Month/Year



Chair
State Records Committee



Executive Secretary
State Records Committee

Retention and Classification Report

Agency: Department of Human Services, Office of Fiscal Operations
(2708)
DHS Office of Fiscal Operations
195 North 1950 West #A
Salt Lake City, UT 84116-3097
801-538-4096

Records Officer

28292 Contractor financial reports

Utah State Archives

AGENCY: Department of Human Services. Office of Fiscal Operations

SERIES: 28292

2

TITLE: Contractor financial reports

DATES: 1990-

ARRANGEMENT: Alphabetical by contractor name.

DESCRIPTION:

These records are created in order to comply with state and federal financial reporting requirements. Records contain original financial reports submitted by contractors, their accountants, or Certified Public Accountants (CPAs) to the Department of Human Services (DHS) to fulfill the DHS, state, and federal financial reporting requirements outlined in DHS contracts.

RETENTION:

Retain 5 years

DISPOSITION:

Destroy.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

Paper: Retain in Office for 4 years and then transfer to State Records Center. Retain in State Records Center for 1 year and then destroy.

APPRAISAL:

Administrative Fiscal Legal

Office of Management and Budget, Circular A-133.

PRIMARY CLASSIFICATION:

Public For non-profit entities

SECONDARY CLASSIFICATION(S):

Private. Non-profit entities: Utah Code 63G-2-302(2)(b)(ii)

Utah State Archives

AGENCY: Department of Human Services. Office of Fiscal Operations

SERIES: 28292

TITLE: Contractor financial reports

(continued)

Protected.	For-profit entities and individuals, primary: Utah Code 63G-2-305(2),(4), and (6)
Private.	For-profit entities, secondary: Utah Code 63G-2-302(1)(g).

Retention and Classification Report

Approval Form

Agency: Department of Human Services. Office of Fiscal Operations

Series 28293 Rate setting records

Number &

Title:

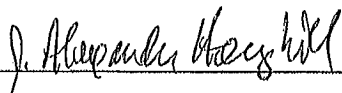
Destroying records in accordance with this agency Retention Schedule is in compliance with the Archives and Records Service and Government Records Access and Management Act (UCA 63-2-101 et seq.).

The Agency classifies its records under provisions of the Government Records Access and Management Act (UCA 63-2-101 et seq.). Classifications have not been approved by the State Records Committee.

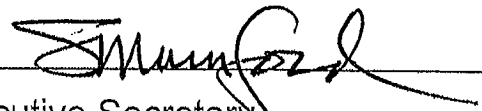
This agency retention schedule was approved by the State Records Committee in:

July/2013

Month/Year



Chair
State Records Committee



Executive Secretary
State Records Committee

Retention and Classification Report

Agency: Department of Human Services. Office of Fiscal Operations
(2708)
DHS Office of Fiscal Operations
195 North 1950 West #A
Salt Lake City, UT 84116-3097
801-538-4096

Records Officer

28293 Rate setting records

Utah State Archives

AGENCY: Department of Human Services. Office of Fiscal Operations

SERIES: 28293

TITLE: Rate setting records

VARIANT: Rate Setting Files

DATES: 1990-

ARRANGEMENT: Chronological by year, then service code.

DESCRIPTION:

This series includes drafts and working papers containing financial data obtained from contracted providers including annual financial reports, tax reports, salary surveys, and other cost data. These records are used to develop and set rates for specific services that the Department of Human Services (DHS) publishes and subsequently pays to contracted providers for services provided to DHS clients. Outdated rates and working papers are used for reference when creating new rates.

RETENTION:

Retain 30 years

DISPOSITION:

Destroy.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

Paper: Retain in Office for 20 years and then transfer to State Records Center. Retain in State Records Center for 10 years and then destroy.

APPRAISAL:

Administrative Fiscal

PRIMARY CLASSIFICATION:

Protected Utah Code 63G-2-305(2),(4),(22)

Utah State Archives

AGENCY: Department of Human Services. Office of Fiscal Operations

SERIES: 28293

TITLE: Rate setting records

(continued)

SECONDARY CLASSIFICATION(S):

Public. Final rates are public.